



Fair Up or Down Vote

May 20, 2005

Noteworthy

"This is an opportunity to set that record aside and do the right thing and give all of these judicial nominees a fair up-or-down vote," **Senator Vitter**, *New Orleans Times-Picayune*, 5/20/05

"It's never been used in the history of the republic and it is time to resolve it", **Senator Brownback**, MSNBC, Chris Matthews, 5/20/05

- [Nominees deserve better, Senator Dole, *The Washington Times*, 5/20/05](#)
- [Democrats Nuke Party Beliefs To Stop Women; Daniel Henninger, *The Wall Street Journal*, 05/20/2005](#)

Nominees deserve better

THE WASHINGTON TIMES

By Elizabeth Dole

May 20, 2005

As the battle over judicial nominees and the role of the filibuster reaches its decisive moment, let's remember that more is at stake than the rules and procedures of the Senate.

Resorting to half-truths and invective to advance a political objective — the establishment of a new 60-vote supermajority requirement for the confirmation of federal judges — is deeply unfair to those who have spent a lifetime building reputations for fairness and intellectual probity.

Take the case of two women now at the center of the filibuster controversy, Justices Priscilla Owen and Janice Rogers Brown. In describing Justices Owen and Brown, some of my Democratic colleagues and their allies have employed phrases like "far out of the mainstream," "radical extremists," "far-right partisans," "hostile to civil rights" and "right-wing judicial activists."

It's been suggested that Justice Owen is too cozy with corporate interests at the expense of consumers. And one publication even called Justice Brown, an African-American who currently sits on the California Supreme Court, a "Jim Crow-era judge, in natural blackface." These irresponsible charges, intended not to fairly describe an individual but to create a caricature of

that individual in the public's mind, will likely be leveled again as the issue of judicial nominations comes to a head on the Senate floor.

The record, of course, tells a different story. Justice Owen was twice elected to the Texas Supreme Court after enjoying a 17-year career as a litigator in a prominent Texas law firm. She earned the highest score on the December 1977 Texas bar exam and ranked at the top of her class at the Baylor University School of Law. Justice Owen has been endorsed by a bipartisan group of 15 past presidents of the Texas state bar. An advocate for providing pro bono legal services to the poor, she also received a unanimous "well-qualified" rating from the American Bar Association, the highest rating given by that organization. And in her last election to the Texas Court, Justice Owen earned a stunning 84 percent of the vote and was endorsed by every major newspaper in the Lone Star state.

I know of no "extremist" with such a distinguished record and broad public support.

For her part, Justice Brown is apparently guilty of the unpardonable sin of supporting private property rights, noting that the Constitution protects these rights through the Fifth Amendment's takings clause. This stance so enrages the left that they have preposterously accused her of trying to undo the New Deal.

The citizens of California like what they see in Justice Brown. In one of the bluest of blue states, Justice Brown was elected to the state's highest court with 76 percent of the vote, the highest vote percentage of all the justices on the ballot. During this election, Justice Brown was endorsed by numerous newspapers across California, including the liberal San Francisco Chronicle.

Justice Brown's own colleagues on the bench appreciate her considerable legal skills. A bipartisan group of 12 judges who have worked closely with Justice Brown called her "extremely intelligent, keenly analytical and very hard working" and noted "she is a jurist who applies the law without favor, without bias, and with an even hand." Not surprisingly, in 2002, she wrote more majority opinions than anyone else on the California Supreme Court. Justice Brown, too, has been given the seal of approval by the American Bar Association, earning a "qualified" rating from the organization's review panel.

Justice Brown's compelling personal story is one that all Americans can embrace. The daughter of sharecroppers, she was educated in segregated schools and worked her way through college and law school as a single mother. Justice Brown has devoted all but two years of her 26-year legal career to public service, becoming the first African-American to sit on California's highest court.

By now, after years of standing by as their reputations were battered, Justices Owen and Brown are no doubt hardened veterans of the filibuster wars. So, too, is Judge Terrence Boyle, who has been nominated by President Bush for a seat on the 4th Circuit Court of Appeals. Judge Boyle, now a federal district court judge in North Carolina, was first nominated for this new appellate position some 14 years ago, but — unbelievably — he has yet to receive an up-or-down vote on the Senate floor.

While the Democrats cannot plausibly justify overturning more than 200 years of Senate tradition by filibustering the president's judicial nominees, let's also remember it is equally unacceptable to treat these nominees as political pinatas to further this aim.

Justices Owen and Brown, and Judge Boyle have earned their reputations as common-sense jurists who apply the law fairly and impartially. Attacking their good names will not diminish the simple fact that they are qualified to serve and merit an up-or-down vote on the Senate floor.

-- *Sen. Elizabeth Dole, a Republican, is the senior senator from North Carolina.*

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Democrats Nuke Party Beliefs To Stop Women

Source: The Wall Street Journal

Date: 05/20/2005

By Daniel Henninger

Surveying the Senate's nuclear-missile silos, Court TV's Fred Graham said that of course the Republican majority had the power to change the filibuster rule, and the Democrats would have to lump it: "What are they going to do," he asked, "appeal to the Supreme Court?" They didn't much enjoy their last visit to the high court after the 2000 election. But the nightmare lingers on.

The death-struggle in the Senate over the Bush judges is best understood as a re-fighting of the post-2000 Florida election challenge. Democratic logic, premised on the famous 5-4 Bush v. Gore decision, runs like this: Bush stole the 2000 election with a Republican-dominated Supreme Court. The resulting presidency, as they've often said, is "illegitimate." Because "justice" failed in 2000, Karl Rove got four years to brilliantly manufacture a bare, popular-vote majority of social conservatives in 2004, extending the illegitimate Bush presidency another four years. Ergo, obstruction is justified.

Judicial nominations, the Bolton nomination, Social Security reform -- Just Say No. But will the voters buy it?

I think the Democrats have as much chance of winning the public with obstruction politics as they did of winning the past two presidential elections: close but not close enough.

If the nation's most popular sport now is poker, then the Democrats have become the party of the constant inside straight. They hold a politically competitive hand, but not a winning hand. They've got public-sector labor unions and a re-energized left that is young, willing and wealthy. But as luck would have it, we've entered the post-public era.

The public-sector ascendancy ran from the New Deal to 1981, when Ronald Reagan fired the striking flight controllers to popular applause. The workaday world for most people now is defined by markets without borders. This unstoppable reality is the Republican margin of victory, and it leaves the Democrats leaderless in a strange land. Bill Clinton is now a sainted Democratic figure, but no one seems to quite recall what he stood for. The party knows that any future victory lies with the wagon train of voters moving to the outer suburbs, but so far it has no competitive message for these folks other than, call home.

After two close but losing elections (and serious Democrats know the 2004 trendline was grim and real), the party has to play the hand it's been dealt. But this is politics. You can't fold an inside straight, and you can't walk away from the table. You're in, permanently. So you bluff. Both the judicial filibusters and the Bolton suppression are mammoth, high-stakes bluffs.

A bluff is an attempt to divert and delay reality. But if you look long enough at the Democratic opposition to Priscilla Owen, Janice Brown and John Bolton, it is impossible not to notice contradictions that undermine the Democratic Party's most basic sense of self.

On the Owen and Brown nominations especially, the Democratic faith system falters badly. Yes, we know Priscilla Owen has ruled "in favor of corporations" and Judge Brown went the wrong way in a lead-paint

decision and both are a threat to "privacy" concerns. And for latter-day Democrats all this matters. But I don't see how the Democrats get around at least some voters noticing that obliterating both Priscilla Owen and Janice Brown bears false witness to the party 's foundational achievements.

Above all else, from FDR onward, the Democratic Party leveled the American playing fields. We can argue the details and methods for getting there, but it's a done deal. Whether Title IX, women in the professions or blacks in formerly all-white industrial unions, this is the party 's legacy, its crown jewel.

But if a smart white woman from good-ole'-boy Texas and a smart conservative black woman from California pose an unacceptable threat to national equilibrium, then years of Democratic moral claims on behalf of "all" women and minorities were hooey. There never was any intention to let conservative women or blacks advance into positions of public authority, not then or now.

Harvard's left-wing faculty tried to blow up Larry Summers for no more than raising the subject. With that event still warm, the non-activist American voters who pay attention to this stuff -- and who the Democrats need to win in 2008 -- are asked to watch the religious left send Priscilla Owen and Janice Rogers Brown to the stake -- as an act of moral principle. Well, some voters may believe women should advance on merit and others with the aid of affirmative action. But female Republicans can't achieve the nation's second-highest bench on either basis. What route is left for women other than prehistoric political obeisance? Voters have a lot of reason to be cynical these days, but there may be a limit.

The Bolton case is simpler. If George Bush had given up on the U.N., he'd have nominated a place-holder, not this linebacker. Talk to reformers inside the U.N., and they will tell you that its lifer bureaucracy is hopeless and destructive of the U.N.'s purposes. Mark Malloch Brown, Kofi Annan's chief of staff, said in our offices that rather than a nice, placid soul from the Upper East Side, he preferred a John Bolton who had the ear of the U.S. President, without which the U.N. cannot succeed in its reforms, notably stiffening its peacekeeping function. So what is the Bolton crucible about?

In part it is about the lack of a program-based opposition strategy to which all the party 's factions agree. Absent that, all that binds them is anger -- over 2000 and 2004, but especially Florida. As described almost daily in print or pixels, the Bush wins were somehow false -- a function of "social conservatives," "the extreme right," "the religious right" and sketchy voter machinations.

If the Democratic argument takes root, then elections themselves have lost legitimacy in the American system. They no longer have relevance to a President's ability or right to govern. We won't let you govern because we do not admit the legitimacy of your victory. This is a radical position. But so is drawing to an inside straight. I'd raise them through 2008. Start with a throw-down of the nuclear option.